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| APPLICATION NO.             | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------------------|-------------|----------------------|---------------------|------------------|
| 09/781,167                  | 02/13/2001  | Lowell S. Fink       |                     | 9472             |
| 7590                        | 11/14/2003  |                      | EXAMINER            |                  |
| LOWELL S FINK               |             |                      | SWINEHART, EDWIN L  |                  |
| 787 CH FONTAINE DU CANET    |             |                      |                     | PAPER NUMBER     |
| VILLEFRANCHE SUR MER, 06230 |             |                      |                     |                  |
| FRANCE                      |             |                      | 3617                |                  |

DATE MAILED: 11/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

|                          |                  |
|--------------------------|------------------|
| Application No.          | FINK, LOWELL S.  |
| 09/781,167               |                  |
| Examiner<br>Ed Swinehart | Art Unit<br>3617 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1) Responsive to communication(s) filed on 08 September 2003.

2a) This action is FINAL.                  2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

4) Claim(s) 21-36 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 21-36 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

1) Notice of References Cited (PTO-892)                  4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)                  5) Notice of Informal Patent Application (PTO-152)  
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.                  6) Other: \_\_\_\_\_

Art Unit: 3617

1. The substitute specification filed 5/14/2003 has not been entered because it does not conform to 37 CFR 1.125(b) and (c) because: There is no statement that the substitute specification contains no new matter, and there is no marked up copy of the original specification showing the changes made.

Upon initial review by the examiner, the proposed substitute specification would appear to be replete with New Matter, i.e. subject matter finding no support in the disclosure as originally filed.

2. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 5/14/2003 have been disapproved because they introduce new matter into the drawings. 37 CFR 1.121(f) states that no amendment may introduce new matter into the disclosure of an application. The original disclosure does not support the showing of specific fork end luff batten boxes and sail arrangements of figures 1-3. Such is example only of New Matter with the drawings, and should not be construed as a complete listing thereof.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 24-36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 24-36 depend from canceled claims 1-3, and therefore their dependency is unclear.

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

Art Unit: 3617

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 21-23 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In claims 21-23, at least the recited specific length characteristics of the sail segments fails to find support in the specification as originally filed. Such should not be construed as a complete listing thereof.

7. Applicant's arguments filed 9/8/2003 have been fully considered but they are not persuasive.

Applicant's arguments are primarily directed towards the rejections based upon prior art. Such rejections have not been applied against the newly submitted claims.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

Art Unit: 3617

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ed Swinehart whose telephone number is 703-308-2566. The examiner can normally be reached on Monday through Thursday between 6:30 am and 2:00 pm.

10. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel Morano can be reached on 703-308-0230. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9326.

11. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.



Ed Swinehart  
Primary Examiner  
Art Unit 3617

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